



2013

CITY MANAGER EMPLOYMENT AGREEMENT
(Raul Godinez II)

THIS 2013 CITY MANAGER EMPLOYMENT AGREEMENT ("Agreement") is made and entered into on this 25th day of JUNE 2013 ("Effective Date") by and between the CITY OF EL MONTE, a municipal corporation and general law city ("CITY") and RAUL GODINEZ II, an individual ("GODINEZ"). For purposes of this Agreement, the capitalized term "Parties" shall be a collective reference to both CITY and GODINEZ. The capitalized term "Party" may refer to either CITY or GODINEZ interchangeably as reasonably appropriate.

RECITALS

THIS AGREEMENT is made and entered into in consideration of the following:

WHEREAS, CITY desires to engage and employ GODINEZ to serve as the City Manager of the City of El Monte as that position is generally described under Chapter 2.12 (City Manager) of the El Monte Municipal Code ("City Manager"); and

WHEREAS, the City Council finds that GODINEZ possesses the education, training, experience and expertise necessary to perform the duties of City Manager; and

WHEREAS, GODINEZ desires to accept employment as City Manager subject to the consideration, terms and conditions set forth under this Agreement; and

WHEREAS, the City Council approved this Agreement and the execution of the same in open session at its meeting of June 25, 2013 as required under Government Code section 53262.

NOW, THEREFORE, for and in consideration of the mutual agreements contained herein, CITY and GODINEZ agree as follows:

SECTION 1. POSITION, TERM, DUTIES:

1.1 EMPLOYMENT AS CITY MANAGER. This Agreement establishes the terms and conditions of employment of GODINEZ as the City Manager of the City of El Monte (hereinafter, "City Manager").

1.2 TERM.

A. The term of this Agreement ("Term") shall commence upon the Effective Date and shall expire on June 30, 2016. Upon the expiration of the Term, this Agreement shall renew automatically for one (1) one-year extension term, unless the City Council provides GODINEZ with written notice of its intent not to so-extend the Agreement prior to the expiration of the Term, which notice shall be issued no less than thirty (30) calendar days prior to expiration of

the Term. The foregoing notwithstanding, nothing in this Section shall operate to prohibit, modify or otherwise restrict the City Council's ability to terminate GODINEZ's employment at any time for cause or for convenience without cause, including during the extension term or at any time prior to the expiration of the initial Term.

B. The Effective Date of this Agreement notwithstanding, GODINEZ shall not commence work or assume the duties and responsibilities of City Manager as set forth herein until Monday, July 15, 2013 (hereinafter, the "Start Date").

1.3 DUTIES AND RESPONSIBILITIES.

A. GODINEZ shall perform the duties and functions of the City Manager as specified under the laws of the State of California, the El Monte Municipal Code, the ordinances and resolutions of the CITY and Section 1.3 (Duties) of this Agreement, below. GODINEZ shall also perform such other duties and functions as the City Council may assign from time to time.

B. GODINEZ shall serve as the City Manager and shall be vested with the powers, duties and responsibilities of the City Manager as set forth in Section 2.12 of the El Monte Municipal Code, as the same may be amended or modified from time-to-time by the City Council. GODINEZ's performance of his duties shall be subject to the direction and oversight of the City Council. It is the intent of the Parties that GODINEZ shall use all reasonable efforts to keep the City Council fully informed of all significant operations or major undertakings of the CITY. GODINEZ's duties and responsibilities shall include, but are not limited to, the following:

1. GODINEZ shall be the chief executive officer of the City and shall be responsible to the City Council for the proper administration of all the affairs of the City.
2. GODINEZ shall perform all the duties of the City Manager as set forth in the El Monte Municipal Code (the "Municipal Code"), the California Government Code, and City policies and procedures approved by the City Council, as may be provided from time to time. The City Manager shall also perform other legally permissible and proper duties and functions as the City Council may assign from time to time.
3. The City Council may also designate GODINEZ as the chief executive of other City-related legal entities. Such other legal entities could include financing authorities, joint powers authorities and/or or the Successor Agency to the El Monte Community Redevelopment Agency.
4. GODINEZ shall administer and enforce policies established by the City Council and promulgate rules and regulations as necessary to implement such policies.
5. GODINEZ shall:
 - (i) Attend all meetings of the City Council, unless excused by the Mayor, and take part in the discussion of all matters before the City Council. GODINEZ shall receive notice of special meetings, emergency meetings, adjourned special meetings and/or adjourned regular meetings called by the Mayor or members of the City Council as provided under the Ralph M. Brown Act (Government Code section 54950 et seq.);

- (ii) Review all agenda documents before preparing the agenda for any meeting of the City Council;
- (iii) Direct, oversee and review the work of all CITY department directors and division managers and all CITY employees and independent contractors under their supervision, except those employees or independent contractors that are directly appointed by or report directly to the City Council. GODINEZ shall endeavor to implement changes that GODINEZ believes will result in greater efficiency, economy, or improved public service in the administration of CITY affairs;
- (iv) Recommend to the City Council from time to time, adoption of such measures as GODINEZ may deem necessary or expedient to safeguard and enhance health, safety, or welfare of the community or for the improvement of the CITY's administrative functions;
- (v) Conduct research in administrative practices in order to bring about greater efficiency and economy in CITY government, and develop and recommend to the City Council long-range plans to improve CITY operations and prepare for future CITY growth and development;
- (vi) Provide management training and develop leadership qualities among the department directors, division managers and the employees and independent contractors under their supervision as necessary to build an informed and effective CITY management team that can plan for and meet all challenges that may come before the CITY; and
- (vii) Exercise control of CITY government in emergencies as authorized by the Municipal Code and California law.

1.4 WORK HOURS. GODINEZ shall be allowed reasonable flexibility in setting his own office hours, provided: (i) GODINEZ maintains a reasonably substantial onsite presence at City Hall during normal CITY business hours; and (ii) GODINEZ is reasonably available to members of the City Council, CITY staff and members of the community during normal CITY business hours. The position of City Manager shall be deemed an exempt position under state and federal wage and hour laws. GODINEZ's compensation (whether salary or benefits or other allowances) is not based on hours worked and GODINEZ shall not be entitled to any compensation for overtime.

1.5 REGIONAL AND PROFESSIONAL ACTIVITIES. The City Council desires that GODINEZ be reasonably active in professional organizations that will promote the standing of CITY and advance the CITY's goals, interests and policy objectives while also providing GODINEZ with opportunities for the type of professional development that will enhance his ability to serve the CITY and perform his duties as City Manager. Toward this end, GODINEZ may, upon reasonable notice and approval by the City Council, join professional organizations and participate in the activities of such organization in so far as such participation promotes the interests of the CITY and does not unduly interfere with the performance of GODINEZ's duties as City Manager. These activities may include, without limitation, participation in the California Contract Cities Association, California League of Cities, Independent City Association, City Management Foundation, San Gabriel Valley City Manager's Association or other similar national, statewide, regional or professional organizations provided that such activities do not in

any way interfere with or adversely affect GODINEZ's performance as City Manager. Subject to funding availability as determined by the City Council in its sole and absolute discretion, CITY may pay for the dues and subscriptions of the City Manager necessary for his participation in national, statewide, regional or professional organizations.

1.6 OUTSIDE EMPLOYMENT. During the term of this Agreement or any extension term, GODINEZ shall not take on or otherwise commence any other compensated or uncompensated full time outside employment with any third party where such employment would be in addition to and performed concurrent with GODINEZ's employment with the CITY or where such outside employment would otherwise create a financial conflict under, or other violation of, federal or state law. For purposes of this Agreement "full time outside employment" shall constitute any employment involving the performance of twenty (20) hours or more of work per week. During the term of this Agreement or any extension term, GONDINEZ shall not, without prior written notice to the City Council and without the City Council's prior written consent, take on or otherwise commence any compensated or uncompensated part-time outside employment with any third party that would be in addition to and performed concurrent with GONDINEZ's employment with the CITY or which would otherwise create a financial conflict of interest or violate the laws of the State of California or the United States. For purposes of this Agreement "part-time outside employment" shall constitute any employment involving the performance of less than twenty (20) hours of work per week. The City Council, in its sole and absolute discretion, reserves the right to withhold consent in so far as any concurrent outside part-time employment would violate applicable law or would adversely impact GODINEZ's ability to effectively and competently perform his duties under this Agreement. The City Council further reserves the right to place conditions upon the granting of any permission to engage in part-time outside employment.

1.7 RESIDENCE. GODINEZ shall not be required to reside within the territorial boundaries of the City of El Monte. The foregoing notwithstanding, GODINEZ shall maintain a permanent residence within a reasonable distance to the City of El Monte so as to permit GODINEZ travel to the City of El Monte within sixty (60) minutes in the event of CITY emergencies.

1.8 CONFLICTS OF INTEREST. GODINEZ shall not, during the term of this Agreement, individually, as a partner, joint venture, officer or shareholder, invest or participate in any business venture conducting business in the corporate limits of the City of El Monte, except for stock ownership in any company whose capital stock is publicly held and regularly traded, without prior approval of the City Council. GODINEZ shall further refrain from developing a financial stake in any commercial venture or partnership with any entity doing business with the CITY where such financial stake would create a violation of Government Code section 1090. For and during the Term of this Agreement and any extension term, GODINEZ further agrees that, except for a personal residence or residential property acquired or held for future use as his personal residence, GODINEZ will not invest in any other real estate or property improvements within the corporate limits of the City of El Monte without the prior consent of the City Council and subject to the restrictions of all applicable financial conflict of interest laws.

1.9 PERFORMANCE REVIEW. The City Council reserves the right to conduct a general job performance evaluation and review of GODINEZ once each fiscal year, which review shall be completed no later than May 31st of each fiscal year but commenced no sooner than March 1st of the same fiscal year. In conducting the review the Parties may, but shall not be required to, use the services of a professional consultant selected by the City Council. The

job performance evaluation and review shall serve the following purposes and objectives: (i) to evaluate GODINEZ's overall job performance over the course of the fiscal year; (ii) to identify areas of notable progress and/or accomplishment and identify ways of sustaining and/or improving upon such progress and/or accomplishments; (iii) to identify areas requiring improvement and how such improvement might be accomplished; (iv) to measure GODINEZ's success in meeting, achieving and/or exceeding City Council-defined, goals, objectives, priorities, activities and programs over the fiscal year or since the last performance evaluation and review; (v) to establish goals, objectives, priorities for the upcoming year; and (vi) to determine what, if any, adjustments or enhancements should be considered and approved to GODINEZ's compensation terms. The failure of CITY to undertake a performance evaluation shall not limit CITY's ability to terminate this Agreement pursuant to Section 5, below. Further, nothing in this Section shall be construed to restrict or otherwise limit the ability of the CITY to undertake any other review or investigation of GODINEZ during the course of a fiscal year which the City Council may deem necessary to address any allegation of inappropriate conduct or other wrongdoing.

SECTION 2. BASE COMPENSATION; BENEFITS AND REIMBURSEMENTS.

2.1 BASE SALARY. City shall pay GODINEZ an annual base salary of One Hundred and Ninety-Five Thousand Dollars (\$195,000.00) per year (hereinafter, the "Base Salary"), subject to deductions for taxes, deferred compensation and other out-of-pocket benefits paid for by GODINEZ as a CITY executive management employee. CITY shall pay GODINEZ in bi-weekly installments at the same time as other employees of CITY are paid. Following the completion of the fiscal year 2013-2014 performance review of GODINEZ, the City Council shall consider, but shall be under no obligation to approve, an increase to GODINEZ's Base Salary, provided that any approved increase shall not take effect earlier than July 1, 2014.

2.2 RETIREMENT/DEFERRED COMPENSATION.

A. IRS 457 Plan: CITY shall select and make available to GODINEZ a qualified deferred compensation plan under Internal Revenue Code Section 457 (hereinafter, the "IRS 457 Plan") and GODINEZ will be allowed to make his own voluntary contributions into said account over the course of each fiscal year up to the applicable contribution limits. CITY shall be under no obligation to make a contribution into the IRS 457 Plan.

B. IRS 401(a) Plan: CITY shall select and make available to GODINEZ a qualified deferred compensation plan under Internal Revenue Code Section 401(a) (hereinafter, the "IRS 401(a) Plan") and will contribute the aggregate sum of Seventeen Thousand Five Hundred Dollars (\$17,500.00) per fiscal year (hereinafter, the "City Deferred Compensation Contribution") into the IRS 401(a) Plan. No more than once each fiscal year following the completion of the annual performance review, the City Council may consider, but does not assume the obligation to approve, an increase in the amount of the City Deferred Compensation Contribution. The City Council may increase the City Deferred Compensation Contribution such that the increased sum is equal to the lesser of the following: (a) Nine percent (9%) of GODINEZ's current Base Salary; or (b) an increased amount representing the maximum annual increase allowed for qualified deferred compensation programs under Internal Revenue Code Section 401 (a) and related statutes.

C. CalPERS: CITY shall provide membership in the California Public Employees Retirement System ("CalPERS") to GODINEZ using the Two Percent (2%) at age 55 formula.

CITY shall contribute the CITY's and GODINEZ's portion of the cost of membership in CalPERS during the term of this Agreement.

2.3 AUTOMOBILE ALLOWANCE. CITY recognizes that GODINEZ's duties as City Manager may require extensive use of an automobile in the ordinary course of performing his duties as City Manager. Accordingly, CITY shall provide GODINEZ with an automobile allowance in the amount of Three Hundred and Fifty Dollars (\$350.00) per month for GODINEZ's use of GODINEZ's own automobile, inclusive of expenses incurred by GODINEZ for gasoline, auto insurance, maintenance, repair and other automobile related costs and expenses. GODINEZ shall be responsible for maintaining and paying for liability insurance as required by State law and for all operating, maintenance and repair costs of GODINEZ's automobile.

2.4 MEDICAL, DENTAL AND VISION INSURANCE.

A. Medical. During the Term of this Agreement or any extension term, CITY shall contribute the prevailing Lowest Cost HMO Family Rate towards the cost of PERS Health medical insurance for GODINEZ.

B. Dental. During the Term of this Agreement or any extension term, CITY shall contribute the prevailing 3-Party rate for Ameritas insurance towards a dental insurance policy for GODINEZ and his eligible dependents.

C. Vision. During the term of this Agreement or any extension term, CITY, on a monthly basis, shall contribute the prevailing 3-Party rate for the Vision Services Plan for GODINEZ and GODINEZ's eligible dependents.

2.5 LONG TERM DISABILITY.

A. Long-Term Disability. GODINEZ shall be eligible for benefits at no cost to GODINEZ under the CITY's Long-Term Disability policy during the term of employment. Details of the Long Term Disability Benefit are outlined in the insurance certificate, but feature a benefit of Sixty Percent (60%) of pre-disability benefits reduced by deductible income, as defined therein.

B. Long-Term Care. CITY shall pay for the comprehensive long-term care program as offered by CalPERS with inflation protection for GODINEZ (Built-In Inflation Protection with maximum daily benefit amount) during the term of employment.

2.6 BUSINESS RELATED EQUIPMENT. CITY shall provide a cell phone and cover service costs and other personal data devices (e.g., computer, etc.) in so far as such items are necessary for the performance of CITY-related business and are in fact used for CITY business.

2.7 JURY DUTY. GODINEZ will receive full pay and benefits while responding to a jury summons or serving on a jury, up to a maximum of fourteen (14) business days. Any compensation for such jury duty (except travel pay) shall be remitted to CITY.

2.8 REIMBURSEMENT. CITY shall reimburse GODINEZ for reasonable and necessary travel, subsistence and other business expenses incurred by GODINEZ in the performance of his duties or in connection with GODINEZ's participation in those authorized activities referenced under Section 1.5, above. All reimbursements shall be subject to and in

accordance with any limitations or restrictions set forth under the laws of the State of California or any CITY-adopted reimbursement policies.

2.9 TERM LIFE INSURANCE. CITY shall select and provide GODINEZ with a policy of term life insurance and shall pay the entire cost of the life insurance premium during the Term of this Agreement or any extension term. During the term of this Agreement, the death benefit payable on the life insurance policy shall be capped at the maximum sum of One Million Dollars (\$1,000,000.00). CITY' and GODINEZ's designated beneficiary shall each be named as beneficiaries for one half (1/2) of the death benefit payment and in the event of GODINEZ's death during the Term of this Agreement, CITY shall receive one half of the death benefit payment and GODINEZ's designated beneficiary shall receive the other half of the death benefit payment.

SECTION 3. VACATION AND OTHER LEAVE.

3.1 VACATION LEAVE.

A. Subject to the availability of a sufficient number of vacation leave hours in GODINEZ's vacation leave bank, GODINEZ shall be allowed to take up to ten (10) calendar days of paid vacation leave each fiscal year. GODINEZ shall provide the City Council with reasonable prior notice before taking any vacation leave in which GODINEZ will be out of the country or otherwise unavailable for a period of five (5) or more consecutive calendar days.

B. Upon the Start Date, GODINEZ shall be allocated a bank of one hundred and sixty (160) hours of paid vacation leave. Thereafter, GODINEZ shall accrue a maximum of one hundred and sixty (160) hours of paid vacation leave per fiscal year which shall accrue incrementally over the course of each fiscal year and be added to GODINEZ's unused vacation leave bank in bi-weekly installments. The foregoing notwithstanding, at no time may GODINEZ's total aggregate unused or unsold vacation hours be allowed to exceed three hundred twenty (320) hours total. If GODINEZ's accrued but unused vacation leave reaches 320 hours total, GODINEZ will stop accruing additional vacation leave unless and until the accrued vacation leave falls below 320 hours. The foregoing notwithstanding, subject to approval by the City Council, GODINEZ may sell back accrued but unused vacation leave hours once each fiscal year quarter, subject to a maximum sell-back cap of one hundred and twenty (120) hours per fiscal year. GODINEZ shall be paid the value of any accrued and unused vacation leave at the time of separation of employment for any reason.

3.2 ADMINISTRATIVE/PERSONAL LEAVE. GODINEZ shall be allocated a maximum of eighty (80) hours of paid administrative/personal leave on July 1st of each fiscal year commencing July 1, 2013. The maximum amount of paid administrative/personal leave hours that GODINEZ may accrue at any given time may not exceed eighty (80) hours total. Accrued but unused administrative/personal leave hours may not be rolled-over to the next CITY fiscal year and may not be sold back to the CITY. GODINEZ shall not be paid the value of any accrued but unused administrative/personal leave hours upon separation of employment for any reason.

3.3 SICK LEAVE.

A. Upon the Start Date, GODINEZ shall be allocated a bank of four hundred (400) hours of paid sick leave. Commencing July 15, 2014, GODINEZ will commence to accrue sick leave hours at a rate of eight (8) hours per month or prorated portion thereof up to a maximum

of ninety-six (96) sick leave hours per fiscal year. GODINEZ shall not accrue any sick leave hours during the period starting on the Effective Date and ending on July 14, 2014. Sick leave shall be used by GODINEZ only in cases of actual sickness or disability of GODINEZ or a member of GODINEZ's immediate family, including GODINEZ's dependents. Upon approval of the City Council, GODINEZ may sell back accrued but unused sick leave hours once each fiscal year quarter, subject to a maximum sell-back cap of one hundred and twenty (120) hours per fiscal year.

B. In the event GODINEZ dies during the Term of this Agreement or in the event GODINEZ, having reached age 55, applies for and is granted a service retirement from CalPERS, GODINEZ (or GODINEZ's heirs in the event of his death) shall receive a dollar sum equal to one half (1/2) of the dollar value of GODINEZ's total accrued but unused sick leave hours at time of death or service retirement, whichever the case may be. In the event GODINEZ applies a service retirement under CalPERS, GODINEZ may apply as much of his earned but unused sick leave hours toward retirement service credit to the extent allowed by CalPERS.

C. In the event GODINEZ separates from the CITY after being terminated for cause or prior to reaching 55 years of age and under circumstances that do not involve the application for or grant of a CalPERS service retirement, then GODINEZ shall not be entitled to the payment of any sums for any sick leave hours GODINEZ may have earned but are unused at the time of his separation from the CITY.

3.4 HOLIDAYS. GODINEZ shall receive paid holidays in accordance with CITY's current practices as such practices may be amended or modified from time to time by the CITY by action of the City Council. Paid holidays will be those approved by the CITY by action of the City Council. The CITY currently provides eleven (11) days paid holidays, and one (1) day floating paid holiday. The following are Holidays observed by the CITY:

- (a) Veteran's Day
- (b) Thanksgiving Day
- (c) ½ day before Christmas Day
- (d) Christmas Day
- (e) ½ day before New Year's Day
- (f) New Year's Day
- (g) Martin Luther King, Jr.'s Birthday
- (h) President's Day
- (i) Memorial Day
- (j) Independence Day
- (k) Labor Day
- (l) Floating Holiday

The foregoing may be referred to collectively as the "City Recognized Holidays" or individually as "City Recognized Holiday." A Holiday Bank shall be established for GODINEZ. At the beginning of each calendar year, GODINEZ shall be allocated ten (10) hours for each full day of a City Recognized Holiday and five (5) hours for each half-day of a City Recognized Holiday up to a calendar year cap of ninety (90) hours total. Hours shall be deducted in 10-hour or 5-hour increments from the Holiday Bank as appropriate over the course of each calendar year for each full-day or half-day City Recognized Holiday that falls on or between Monday and Thursday of a given week. Hours will not be deducted from the Holiday Bank to the extent a City Recognized Holiday falls on a Friday, Saturday or Sunday. On or about January 20th of

each calendar year, GODINEZ shall receive a cash payment for all unused holiday time left remaining in the Holiday Bank, as of the close of business on December 31st of the calendar year immediately preceding, at straight time on the base rate of compensation. There shall be no carry-over of banked holiday time from one calendar year to the next.

3.5 CITY COUNCIL'S RENEGOTIATION RIGHT. As of the Effective Date of this Agreement, the City Council has commenced but has yet to complete an upper management classification study being conducted under the guidance and assistance of the consulting firm of Kelly Associates Management Group LLC. Upon the completion of said classification study, the City Council reserves the right to reopen negotiation of the terms under which GODINEZ accrues, cashes-out and is allocated vacation leave, administrative/personal leave, vacation, sick leave and holiday leave to bring such benefits in line with whatever uniform upper management benefits are approved by the City Council following completion of the classification study. Nothing in this provision shall operate to reduce the number of previously banked vacation leave or sick leave hours GODINEZ has already accrued as of the date of any modification, but the modification may change the manner in which all past and future accrued vacation and/or sick-leave may be cashed-out under this Agreement. Any modification shall be made in writing in the form of a written amendment.

SECTION 4. ILLNESS OR INJURY; DISABILITY AND DEATH.

4.1 CESSATION OF WORK DUE TO NON-PERMANENT ILLNESS OR INJURY. In addition to any right of termination set forth under Section 5, below, CITY also reserves the right to terminate GODINEZ's employment along with this Agreement if GODINEZ ceases to work as a result of illness or injury: (i) which does not arise out of the course of employment; (ii) which does not limit a major life activity within the meaning of California's Fair Employment and Housing Act; and (iii) where the cessation of work continues beyond the longer of the following: a period of four successive weeks beyond GODINEZ's accrued sick leave; or a period of twenty (20) consecutive days beyond a period of thirty (30) consecutive days of incapacity due to illness or injury.

4.2 DISABILITY. In addition to any right of termination set forth under Section 5, below, CITY reserves the right to terminate GODINEZ's employment along with this Agreement after GODINEZ suffers any physical or mental disability that does not arise out of the course of employment and that prevents the performance of GODINEZ's essential job duties, unless reasonable accommodation can be made to allow GODINEZ to continue working. The foregoing notwithstanding, CITY may terminate GODINEZ if the disability poses a direct threat to CITY, GODINEZ, or any other employees working for CITY and any reasonable accommodation attempted by CITY would not mitigate or eliminate such a threat. The CITY will not provide a severance payment if GODINEZ is terminated under this Section of this Agreement.

4.3 ILLNESS, INJURY OR DISABILITY ARISING OUT OF THE COURSE OF EMPLOYMENT. In the event GODINEZ suffers a physical or mental disability arising out of the course of employment, CITY's ability to terminate GODINEZ solely and exclusively on the basis of the illness, injury or disability shall be subject to applicable workers' compensation laws for the State of California, the Americans with Disabilities Act (42 U.S.C. section 12101 et. seq.) and the California Fair Employment and Housing Act. Further, GODINEZ's exclusive remedy or remedies against CITY for such illness, injury or disability shall be those legally required under the workers' compensation laws of the State of California.

4.4 MEDICAL EXAMINATION. GODINEZ agrees to submit to a medical and/or psychological examination by a qualified physician or psychiatrist selected by the CITY, in the event a decision must be made under Sections 4.1 through 4.3. CITY and GODINEZ shall receive a copy of all medical reports related to the examination.

4.5 DEATH OF EMPLOYEE. This Agreement along with GODINEZ's employment shall terminate automatically upon GODINEZ's death. In the event GODINEZ dies while employed by CITY under this Agreement, GODINEZ's beneficiaries or those entitled to GODINEZ's estate, shall be entitled to GODINEZ's earned salary and any in-lieu payments for accrued benefits, including compensation for the value of all accrued leave balances.

4.6 COMPENSATION UPON TERMINATION. Except as otherwise provided under this Agreement, if GODINEZ's employment is terminated pursuant to this Section 4, CITY shall provide GODINEZ with the same compensation and benefits provided in the event of termination pursuant to Section 5.2. If termination is caused by GODINEZ's death, CITY shall provide the compensation and benefits otherwise due GODINEZ to GODINEZ's executor, administrator, heirs, personal representatives, successors, and assigns. CITY will not provide for severance pay if GODINEZ is terminated under the provisions of this Section 4.

SECTION 5. EMPLOYMENT "AT-WILL"; SEPARATION FROM EMPLOYMENT

5.1 EMPLOYMENT WITH CITY "AT-WILL."

A. GODINEZ's employment status with CITY shall be at-will and GODINEZ shall serve at the pleasure of the City Council as provided under Government Code section 36506. CITY, through the City Council, may at any time terminate GODINEZ's employment with the CITY with or without cause by majority vote of its full membership. GODINEZ acknowledges, understands and agrees that GODINEZ may not avail himself of any procedures, provisions or protections set forth under the CITY's Employment Policies, as defined herein, in so far as such procedures, provisions or protections limit, restrict, modify, prohibit or regulate GODINEZ's status as an "at-will" employee of CITY or the ability of the City Council to terminate GODINEZ's employment at any time for cause or for convenience. For purposes of this Agreement, the capitalized term "Employment Policies" means and refers to any ordinance, resolution, regulation, rule or other written policy of the CITY as the same may be amended, modified or supplemented from time-to-time (including but not limited to Chapter 2.72 (Personnel System) of the El Monte Municipal Code and any written employment manual of the CITY) which governs, regulates or otherwise relates to employment with the CITY. The CITY's Employment Policies shall not apply to GODINEZ in so far as such Employment Policies limit, restrict, modify or regulate (or may be interpreted to limit, restrict, modify or regulate) GODINEZ's status as an "at-will" employee of CITY.

B. Except as otherwise provided under this Section 5, GODINEZ shall not be entitled to any pre-termination hearing or other similar proceeding or appeal proceeding as a precondition to any decision or action by the City Council to terminate GODINEZ's employment whether for cause or for convenience.

C. Nothing in this Agreement shall confer upon GODINEZ any right to any property interest in continued employment with the CITY.

5.2 RESIGNATION/RETIREMENT.

A. GODINEZ may resign and/or retire from his employment with the CITY at any time for any reason, provided GODINEZ provides the City Council with written notice of his intent to so terminate his employment at least forty-five (45) calendar days prior to the effective date of separation.

B. The City Council in its sole and absolute discretion may waive or shorten the 45-day prior written notice requirement provided such waiver is made in writing. The failure to provide the prior written notice required under this Section shall constitute a material breach of this Agreement.

5.3 SEPARATION WITHOUT CAUSE; SEVERANCE.

A. In the event GODINEZ is terminated for convenience and without cause by the City Council prior to the expiration of the Term and while GODINEZ is willing and able to perform the City Manager's duties under this Agreement, then in that event the CITY agrees to pay GODINEZ a lump sum cash payment equal to the lesser of the following: (i) the cash value of six (6) months' worth of GODINEZ's annual Base Salary at the time of separation [i.e., the prorated value of one months' worth of GODINEZ's annual Base Salary at the time of separation multiplied by six]; or (ii) the prorated value of one months' worth of GODINEZ's annual Base Salary at the time of separation multiplied by the number of months or portion thereof remaining on the Term or any extension term.

B. The CITY shall extend to GODINEZ the right to continue health insurance as may be required by and pursuant to terms and conditions of this Consolidated Omnibus Reconciliation Act of 1986 ("COBRA"). The CITY agrees to pay GODINEZ's COBRA coverage for the same number of months for which GODINEZ is entitled to a lump sum cash payment under Section 5.3(A), or until GODINEZ either secures and begins full-time employment or obtains other health insurance, whichever of these three events first occurs. GODINEZ shall notify the CITY within five (5) calendar days of securing new full-time employment or insurance.

C. All payments required under Section 5.3(A) or 5.3(B), above, are subject to and shall be interpreted to comply with the limitations set forth in Government Code section 53260. Further, in the event GODINEZ is convicted of a crime involving an abuse of office or position, GODINEZ shall reimburse the CITY for any paid leave or cash settlement (including severance), as provided by Government Code sections 53243 through 53243.4.

5.4 SEPARATION FOR CAUSE.

A. Notwithstanding the provisions of Section 5.3, above, GODINEZ may be terminated for cause. As used in this Section, "cause" shall mean only one or more of the following:

- (i) The Breach of this Agreement;
- (ii) Conviction (including a plea of no contest) of a felony or any misdemeanor under the Political Reform Act or Government Code Section 1090;
- (iii) Conviction (including a plea of no contest) of any offense constituting an "abuse of office or position" within the meaning of Government Code section 53243.4;

- (iv) Conviction (including a plea of no contest) of a misdemeanor involving a crime of moral turpitude or felony under California law;
- (v) Continued abuse of non-prescription drugs or alcohol that materially affects the performance of GODINEZ's duties;
- (vi) Repeated and protracted unexcused absences from GODINEZ's office and duties;
- (vii) Resume fraud;
- (viii) A finding by judicial proceeding that legally prohibited personal acts of sexual harassment against a CITY official or employee or legally prohibited personal acts of discrimination against a CITY official or employee has occurred;
- (ix) A pattern of repeated, willful and intentional failure to carry out materially significant and legally constituted policy decisions of the City Council made by the City Council as a body, or persistent willful violation of properly established rules and procedures; and
- (x) Any other action or inaction of GODINEZ that materially and substantially impedes or disrupts the performance of CITY or its organizational units or is detrimental to employee safety or public safety.

The City Council may, at its sole option, place GODINEZ on administrative leave with pay until resolution of allegations or charges, including but not limited to criminal charges, brought against GODINEZ, or until a final judicial or administrative decision finding legally prohibited personal acts of sexual harassment against a CITY official or employee or legally prohibited personal acts of discrimination against a CITY official or employee. Prior to terminating this Agreement pursuant to this Section, the City Council shall give GODINEZ at least ten (10) calendar days' prior written notice of the charges. Within the ten-day period, but not earlier than five (5) calendar days after the notice has been given, the City Council shall meet with GODINEZ in closed session and give GODINEZ an opportunity to address the City Council regarding the charges. GODINEZ may have a representative at the closed session with the City Council. After hearing GODINEZ's response to the charges, the City Council shall make a decision as to whether to terminate this Agreement and shall inform GODINEZ in writing of its decision. Other than as provided in this subsection, GODINEZ expressly waives any other form of hearing or appeal of the Council's decision. Nothing in this subsection creates a property right in employment. Notwithstanding anything contained in this subsection, GODINEZ remains an at-will employee serving at the pleasure of the Council. The initiation of termination proceedings for cause shall not operate to prohibit or otherwise restrict the City Council from exercising its right to terminate GODINEZ without cause as provided under Section 5.3 of this Agreement.

B. In the event the City terminates GODINEZ for cause, then CITY may terminate this Agreement immediately, and GODINEZ shall be entitled to only the compensation accrued up to the date of termination, payments required under Sections 3 and subsection 5.5, and such other termination benefits and payments as may be required by law. In the event of termination for cause, GODINEZ shall not be entitled to any severance provided for under Section 5.3,

above. The foregoing notwithstanding, CITY may deduct from such payments any reimbursement sums it is owed pursuant to Government Code sections 53243 through 53243.4.

5.5 PAYMENT FOR UNUSED LEAVE BALANCE. On separation from CITY employment, GODINEZ shall be paid for all unused accrued leave allowances set forth under Section 3 to the extent such leave is available to be paid-out.

5.6 RETURN OF CITY EQUIPMENT. GODINEZ agrees that all property including, without limitation, all equipment, tangible Proprietary Information (as defined below), documents, records, notes, contracts, and computer-generated materials, furnished to or prepared by him incident to his employment, are the property of CITY and shall be returned promptly to CITY upon termination of GODINEZ's employment. GODINEZ's obligations under this subsection shall survive the termination of his employment and the expiration or early termination of this Agreement.

SECTION 6. GENERAL PROVISIONS.

6.1 PROPRIETY INFORMATION. "Proprietary Information" means all information and any ideas pertaining in any manner to the business of the City Council, the CITY or the CITY's various, departments, divisions, committees and commissions, which was produced by GODINEZ in the course of his employment or otherwise produced to or acquired by GODINEZ in the course of his employment with the CITY. Proprietary Information shall include, without limitation, trade secrets, product ideas, inventions, processes, formulae, data, know-how, software and other computer programs, copyrightable material, marketing plans, strategies, sales, financial reports, forecasts and customer lists. All Proprietary Information not generally known outside of CITY's organization, and all Proprietary Information so known only through improper means, shall be deemed "Confidential Information." During his employment by CITY, GODINEZ shall use Proprietary Information, and shall disclose Confidential Information, only for the benefit of CITY and as is, or may be, necessary to perform his job responsibilities under this Agreement. Following termination, GODINEZ shall not use any Proprietary Information and shall not disclose any Confidential Information, except with the express written consent of CITY. GODINEZ's obligations under this Section shall survive the termination of his employment and the expiration of this Agreement.

6.2 NOTICES. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be effective upon delivery by hand or three (3) business days after deposit in the United States mail, postage prepaid, certified or registered, and addressed to CITY at the address below, and at the last known address maintained in GODINEZ's personnel file. GODINEZ agrees to notify CITY in writing of any change in his address during his employment with CITY. Notice of change of address shall be effective only when accomplished in accordance with this Section.

City's Notice Address:

City of El Monte
11333 Valley Boulevard
El Monte, California 91731
Attn: Mayor and City Council

City Manager's Address: [Deliver to last updated address in personnel file]

6.3 INDEMNIFICATION.

A. CITY shall defend, hold harmless and indemnify GODINEZ against any claim, demand, judgment or action of any type or kind arising within the course and scope of GODINEZ's employment to the extent required by Government Code sections 825 and 995.

B. Subsection (A) of this Section notwithstanding, CITY reserves all rights (including all rights to monetary reimbursement) afforded under Government Code sections 53243, 53243.1, 53243.2, 53243.3 and 53243.4 and nothing in this Agreement shall operate or otherwise be construed to place any restriction upon CITY in exercising and/or enforcing such rights under the foregoing Government Code sections. In the event GODINEZ is convicted of an offense constituting an abuse of office or position, GODINEZ shall reimburse CITY for any sums expended investigating and/or defending such wrongdoing as provided under Government Code section 53243, 53243.1 and 53243.3. For purposes of this Agreement, the phrase "abuse of office or position" shall have the same meaning as set forth under Government Code section 53243.4

6.4 ENTIRE AGREEMENT. This Agreement is intended to be the final, complete, and exclusive statement of the terms of GODINEZ's employment by CITY. This Agreement supersedes all other prior and contemporaneous agreements and statements, whether written or oral, express or implied, pertaining in any manner to the employment of GODINEZ, and it may not be contradicted by evidence of any prior or contemporaneous statements or agreements. To the extent that the practices, policies, or procedures of CITY, now or in the future, apply to GODINEZ and are inconsistent with the terms of this Agreement, the provisions of this Agreement shall control.

6.5 AMENDMENTS. This Agreement may not be amended except in a written document signed by GODINEZ, approved by the City Council and signed by Mayor.

6.6 WAIVER. Failure to exercise any right under this Agreement shall not constitute a waiver of such right.

6.7 ASSIGNMENT. GODINEZ shall not assign any rights or obligations under this Agreement. CITY may, upon prior written notice to GODINEZ, assign its rights and obligations hereunder.

6.8 SEVERABILITY. If any court of competent jurisdiction holds any provision of this Agreement to be invalid, unenforceable, or void, the remainder of this Agreement shall remain in full force and effect.

6.9 ATTORNEYS' FEES. In any legal action, arbitration, or other proceeding brought to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs.

6.10 GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of California, with venue properly only in Los Angeles County, State of California.

6.10 INTERPRETATION. This Agreement shall be construed as a whole, according to its fair meaning, and not in favor of or against any party. By way of example and not in limitation, this Agreement shall not be construed in favor of the party receiving a benefit or

against the party responsible for any particular language in this Agreement. Captions are used for reference purposes only and should be ignored in the interpretation of the Agreement. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the Parties to this Agreement and by no other means. Each Party waives its future right to claim, contest, or assert that this Agreement was modified, cancelled superseded or changed by any oral agreement, course of conduct, waiver or estoppel.

6.11 ACKNOWLEDGMENT. GODINEZ acknowledges that he has had the opportunity to consult legal counsel with regard to this Agreement, that he has read and understands this Agreement, that he is fully aware of its legal effect, and that he has entered into it freely and voluntarily and based on his own judgment and not on any representations or promises other than those contained in this Agreement.


IN WITNESS WHEREOF, CITY has caused this Agreement to be signed and executed on its behalf by its Mayor and duly attested to by its City Clerk, and GODINEZ has signed and executed this Agreement, as of the date first indicated above.

CITY OF EL MONTE

By: 
Andre Quintero, Mayor

Date: 7/1/13

APPROVED AS TO FORM:


By: 
Name: Richard Podillo
Title: Asst. City Atty. 6-30-13

GODINEZ

By: 
Raul Godinez II

Date: 6-28-2013

ATTEST:

By: 
Lorene Gutierrez, City Clerk
Date: 7-2-13